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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/713,617

11/13/2003

David F. Bednarek

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT

PAPER NUMBER

1764

MAIL DATE

DELIVERY MODE

05/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/713,617

Applicant(s)

BEDNAREK ET AL.

Examiner

Virginia Manoharan

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-102 is/are pending in the application.
- 4a) Of the above claim(s) 33,34 and 60-81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32, 35-59 and 82-102 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-32, 35-59 and 82-102 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a). The claims are incomplete for omitting essential structural cooperative relationships of elements and omitting essential steps, e.g., the tie-in or structural connection of the claimed feedback control loop level sensors and variable –flow valves, relative to the other elements or steps in the system. The omissions amount to a gap between the necessary structural connections and steps. See MPEP § 2172.01.

b). It is unclear what specific element(s) in a)-e) of claim 1, the fluid levels in the system is being maintained at near constant levels within the context of the claimed invention?

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-18, 25 and 35 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 and 37-42 of copending Application No. 10/713,591 in view of Kraner (6,497,555).

Although the conflicting claims are not identical, they are not patentably distinct from each other because of the same reasons as set forth at page 4 of the previous Office action.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-18, 25 and 35 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-15 and 37-42 of copending Application No. 10/713,591. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as indicated at page 5 of the previous Office action.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other

copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18, 24, 35-40, 52-59, and 82-102 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1211236 or Huse (3,956,072) in view of Stewart (1,668,532) and Hobbs (4,265,263) and with or without Chou et al (6,698,353).

The above references are applied for the same combined reasons as set forth at page 6, the second full paragraph of the previous Office action.

Hobbs is applied to teach that the claimed “feedback control loop comprising level sensors and variable-flow valves for controlling fluid flow and maintaining fluid levels in the system at near constant levels” in claim 1; and “controlling fluid flow and maintaining fluid levels in the system at near constant levels using a feedback control loop comprising level sensors and variable-flow valves” claimed in claim 36 (note also claims 25 and 35) are known expediciencies in the art. See Figs. 1-2 of the Hobbs' reference. That the control system of Hobbs is a feedback control loop is evident from Chou's definition of said control at col. 6, lines 22-27. To incorporate Hobbs' control means and method to the apparatus and method of GB' 236 or Huse would have been obvious to one of ordinary skill in the art in view of the suggestion provided at col. 1,

lines 19-32 of the Hobbs' reference.

Claims 19-23, 25-32, and 41-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1211236 or Huse (3,956,072) as modified by Stewart (1,668,532) as applied to claims 1-18, 24, 35-40, 52-59, and 82-102 above, and further in view of Benian (5,667,683) or Cooksley (4,045,293) and Hobbs (4,265,263) and with or without Chou et al (6,698,353).

The above references are applied for the same combined reasons as set forth at the paragraph bridging pages 6 and 7 of the previous Office action. Hobbs and Chou are applied for the same reasons as discussed supra for claim 25.

Claims 10, 37 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1211236 or Huse (3,956,072) as modified by Stewart (1,668,532) and Hobbs (4,265,263) and with or without Chou et al (6,698,353) as applied to claims 1-18, 24, 35-40, 52-59, and 82-102 above, and further in view Trusch (4,316,774) or Kikkawa et al (4,437,933).

The above references are applied for the same combined reasons as set forth at the first full paragraph page 7 of the previous Office action.

Claims 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1211236 or Huse (3,956,072) as modified by Stewart (1,668,532) Hobbs (4,265,263) and with or without Chou et al (6,698,353) as applied to claims 1-18, 24, 35-40, 52-59, and 82-102 above, and further in view Sneed et al (3,603,082) or Straka (5,761,903).

The above references are applied for the same combined reasons as set forth at the last full paragraph, page 7 of the previous Office action.

Applicants' arguments filed February 28, 2007 have been fully considered but they are not persuasive.

Contrary to applicants' assertions, Hobbs and Chou are being cited to teach that the argued "a feedback control loop comprising level sensors and variable-flow valves for controlling fluid flow and maintaining fluid levels at near constant levels in the system" ; and/or the step of "controlling fluid flow and maintaining fluid levels in the system at near constant levels using a feedback control loop comprising level sensors and variable-flow valves." are not unobvious subject matter nor are they evidence of criticality in the art.

Thus, in the absence of anything which may be "new" or "unexpected result, a prima facie case of obviousness has been reasonably established by the art and has not been rebutted. Unexpected results must be established by factual evidence. Mere arguments or conclusory statements in the specification, applicants' amendments, or the Brief do not suffice. In re Linder, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1872). In re Wood, 582, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Moked et al teaches that monitoring the level is known in the instrumentation art.

This application contains claims 33-34 and 60-81 drawn to a nonelected invention. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 571-272-1450.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola, can be reached on 571-272-1444.

The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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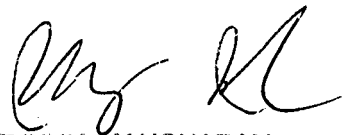
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Business Center (EBC) at 866-217-9197 (toll-free).


VIRGINIA MANOHARAN
PRIMARY EXAMINER
ART UNIT 133 / 764